

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

J. E. MERIT CONSTRUCTORS, INC.

Employer

and

Case 9-RC-17430
(Formerly 15-RC-8290)

MILLWRIGHT AND MACHINERY ERECTORS
LOCAL UNION NO. 720, AFFILIATED WITH THE
UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{1/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

^{1/} The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

5. The Employer, a corporation, during the past 10 years, has been engaged in providing year-round contract maintenance services to the Motiva refinery at Convent, Louisiana, the only location involved in this proceeding, where it employs approximately 200 maintenance employees, including about 35 employees in the unit found appropriate.^{2/} There is no history of collective bargaining affecting any of the employees at issue in this proceeding.

The Petitioner seeks to represent a unit comprised of approximately 35 millwrights^{3/} on the basis that they constitute a true craft unit. The Employer maintains that the unit sought by the Petitioner is not appropriate and that the smallest appropriate unit must include all of its maintenance employees at Motiva. The Employer, contrary to the Petitioner, would also include the operator assigned to the millwrights' group in a millwrights unit but would exclude millwrights temporarily employed during turnarounds. Finally, the Petitioner, contrary to the Employer, asserts that four laid-off millwrights enjoy a reasonable expectancy of recall and should be eligible to vote in an election.^{4/} The Petitioner is not willing to proceed to an election in any unit larger than the millwrights and their operator.

Based upon a careful review of the record evidence, I find that the millwrights, excluding the operator, constitute a separate appropriate craft unit; that the evidence fails to establish that the turnaround millwrights are regular full-time or regular part-time employees and they should not be included in the unit; and that the four laid-off millwrights should be permitted to vote subject to challenge because the evidence is insufficient to determine whether they enjoy a reasonable expectancy of recall.

The Employer classifies its Motiva employees as boilermakers, pipefitters, millwrights, helpers for those crafts, carpenters, auto mechanics, welders, laborer, painters, operators and drivers. The employment application requests applicants to list primary, secondary and special skills and asks for information concerning work experience and training in each of those skill areas. The applicants are asked to indicate whether they are willing to perform work in more than one skill area, whether they are willing to undergo classroom training in other skill areas and whether they are willing to perform helper work in areas in which they are not skilled. The Employer expects a minimum of 2 years training from an applicant for a skilled position. As part of the hiring process, applicants applying for skilled positions must take the Employer's written skill assessment examination for any skill area in which they wish to be considered. The Employer administers separate skill examinations for pipefitters, boilermakers, carpenters, millwrights and operators. Welders take the boilermaker skill examination. There is no record evidence that truck drivers, auto mechanics, painters and laborers are required to undergo the

^{2/} These employees make up the Employer's complement of regular maintenance employees at Motiva and do not include employees employed temporarily during turnarounds.

^{3/} The Employer classifies its two machinists as millwrights and the Petitioner would include them in the unit.

^{4/} In its brief, the Petitioner abandoned its contention that an eligibility formula under *Daniel Construction Co.*, 133 NLRB 264 (1961), is appropriate for determining eligibility. Inasmuch as the Employer maintains and the record reflects that the employees in the unit are engaged in maintenance work rather than construction work, I agree that it is not appropriate to apply a *Daniels* eligibility formula.

Employer's skill assessment examination. In order to be hired as a mechanic,^{5/} in a particular craft, the applicant must receive a passing grade on the skill assessment examination for that particular craft. An applicant who fails to pass the skill assessment examination, may be hired as a helper in that classification.

Although the Employer does not administer its own training or apprenticeship programs, it has a training agreement with the Associated Builders and Contractors (ABC) which provides craft training in 16 different skill areas. The Employer arranges, through a training coordinator, for employees to take an ABC skill assessment examination to identify employees' strong and weak areas of knowledge within their crafts. The ABC administers a Wheels of Learning program for each of the 16 skill areas and each skill program is separated into different training modules. By identifying weak areas through the ABC skill assessment examination, an employee may take an ABC training module specific to that weak area rather than having to undergo a 3 to 5 year apprenticeship program. In May or June of 2000, the Employer required its employees to undergo the ABC skill assessment examination for their primary skill.

The job descriptions in evidence reflect that millwrights and machinists (classified by the Employer as millwrights) must possess the ability to make precision measurements, fits and alignments of machinery and to repair pumps and other rotating equipment. None of the other job descriptions include those requirements. Each craft has its own tool list which the employees are required to provide. These tool lists are comprised mostly of generic hand tools and there is a significant degree of overlap in the tools required across craft lines. However, the Employer provides the millwrights with six boxes of specialty precision tools which none of the other employees use.

All employees at Motiva are subjected to the same personnel policies, fringe benefit programs, wage schedule and work and safety rules. Except for laborers, welders and instrument technicians, the wage schedule does not distinguish among crafts. It sets forth wage rates for various levels of mechanics and helpers and these wage rate levels are shared across craft lines. The capital project group works four 10-hour days on Monday through Thursday. The remaining employees at Motiva work 80 hours over 9 days in a 2-week period with every second Friday off.

Darrin Hurley, site manager, has been the Employer's highest ranking official at the Motiva refinery since July 1, 1999. Stanley Dixon (off site), Gary Evans (east end) and Donnie Miller (west end) are millwright supervisors who report directly to Hurley and each is responsible for supervising millwright activities in one of three separate geographic areas of the refinery. Sammy Prejean, Joe Yarborough and Bill Cast are millwright foremen who report directly to Dixon, Evans and Miller, respectively.^{6/} The Dixon/Prejean group consists of eight millwrights, a millwright helper and Jackie Poche, an operator. The Evans/Yarborough group

^{5/} A mechanic is an employee working above the helper level and does not refer to auto mechanics who repair vehicles.

^{6/} The parties stipulated, the record reflects and I find that Hurley, Dixon, Evans, Miller, Prejean, Yarborough and Cast, as well as all other supervisors and foremen at Motiva, are supervisors within the meaning of Section 2(11) of the Act.

consists of nine millwrights. The Miller/Cast group consists of 15 millwrights and a millwright helper.^{7/} There are no millwrights at Motiva who are not directly and separately supervised by millwright supervision and with the exception of the one operator, all of the employees under direct millwright supervision are millwrights. All employees under millwright supervision are designated as being in the S-1 shop area. Terry Savoy is the supervisor over the S-4 shop area and he, along with three foremen under him, supervises drivers, laborers, mechanics, carpenters, welders and pipefitters. Jim Wilson is the supervisor over the A-1 and A-2 areas in the west end and along with four foremen under him, supervises boilermakers, pipefitters, welders, carpenters and operators. Callie Owens is a supervisor over areas B-1 and G-1 in the west end and off site with four foremen who supervise boilermakers, laborers, pipefitters, welders, painters, operators and drivers. Jerry Dick is the area C-1 (east end) supervisor with one foreman who supervises boilermakers, welders, operators and pipefitters. Frank Todora is the supervisor over area C-3 in the east end and with two foremen, he supervises boilermakers and operators. Arthur Picou is the capital project supervisor who, along with a supervisor and four foremen under him, supervises carpenters, operators, welders and pipefitters. The record indicates that foremen such as Kermit Braud, Darrell Prejean, John Achord, Mike Brown, Frank Clement and Phil Todora supervise mixed groups of boilermakers, pipefitters and welders.

The primary function of the millwrights is to maintain and repair rotating equipment such as pumps, gear boxes, compressors and fin fans. Their work on this rotating equipment consists of removing the equipment from the refinery piping system, transporting the equipment to the shop, disassembly, repair and reassembly of the equipment, transporting it back to the piping system where it is reinstalled and precision aligned back into the system. On occasion, a millwright may be able to perform maintenance on rotating equipment in place without having to remove it from the piping system. The record discloses that no other employees are assigned to rebuild pumps, install bearings or do precision alignments.

The functions of the pipefitters and the boilermakers to some degree overlap the work of the millwrights. In this connection, the pipefitters and boilermakers are responsible for fabricating, maintaining, unclogging and repairing piping and valves. Millwrights normally work in pairs and work with pipefitters and operators when they remove and reinstall pumps into the piping system.^{8/} Thus, in removing a pump from the system, it is a pipefitter's responsibility to disconnect the flange bolts that connect the piping to the exterior of the pump so that the pump may be removed. The millwrights are responsible for working with any internal pump piping or tubing. The pipefitter is also responsible for installing a blind (stopper) in the end of the disconnected pipe to prevent spillage in the event of a valve failure. While the pipefitter is performing these tasks, the millwrights will disconnect the pump driver (power source) from the pump to prepare it for removal. The millwrights with the assistance of an operator using cranes or other moving equipment, then transport the disconnected pump to the shop. The pipefitter on about 5 percent to 6 percent of the jobs may assist the millwrights in rigging the pump to the moving equipment for transport.

^{7/} These numbers are based upon the Employer's daily foreman's report (time sheet) for June 27, 2000, a typical work day according to the testimony of Hurley.

^{8/} About 90 percent of millwrights' work involves overhaul of pumps.

In the shop, the millwrights rebuild and overhaul the pump according to an inspection report check list. After the pump is overhauled, the pump transport process is reversed and may involve operators and pipefitters. The Millwrights use precision measuring devices to properly align the pump. Although pipefitters are responsible for tightening the flange bolts which connect the piping externally to the pump, the millwrights, using precision laser measuring tools, may direct the pipefitter in tightening bolts to assure that the pump is properly aligned and is not overly stressed. After the pump is reinstalled, the vibration group will analyze the vibration of the pump as it is running to ascertain whether it is operating properly.^{9/} A millwright testified that he spends about 1 percent of his time working with boilermakers and pipefitters. Supervisors state employees work in mixed or composite crews about 50 percent of the time. The record does not reflect what portion of the millwrights' time is spent in the shop.

Although the pipefitters generally disconnect external flange bolts and blind the pipe, millwrights may perform these tasks when a pipefitter or boilermaker is not available. A millwright testified that this happens about 5 percent or 6 percent of the time. Millwrights may hydrotest lube oil coolers which is normally assigned to boilermakers. The record reflects only that such hydrotesting is a small portion of the millwrights' job but does not reflect the frequency or duration of such work. Pipefitters are the employees who install new chemical injection pumps which happens about once a month. The pipefitters build the pump base, install the pump on the base and connect the pipes and tubes. Electricians from the outside make the electrical connections.^{10/} A millwright finishes the job by inserting oil in the pump and insuring that it is running properly. Chemical injection pumps do not require alignment. If a chemical injection pump needs to be repaired, a millwright performs that work. Millwrights may be called upon to remove insulation blankets in order to gain access to equipment they are to repair if an employee of the Motiva insulation contractor is not available to do so. The record does not indicate how often this happens. A millwright may operate a forklift to move a piece of rotating equipment if an operator is not available and may use a manlift to access high rotating equipment in need of repair. Manlifts are used primarily by boilermakers, pipefitters and occasionally by millwrights. The record does not reflect the portion of their time millwrights spend using forklifts and manlifts.

The Employer's planners meet daily with Motiva operations personnel to plan maintenance work for the following day. As a result of this planning, work orders, with unique work order numbers, are electronically recorded and printed out in a report called a "Daily Work Schedule by Shop Zone." The only such report in evidence is the one dated July 10, 2000 for zone S-1, the millwright shop. This report contains 15 work orders for millwrights showing for each a work order number, step number, priority, equipment identification number, the task to be performed, the craft assigned, the number of employees assigned and the number of hours budgeted. The report in evidence contains jobs requiring multiple steps and indicates that the millwrights are

^{9/} The vibration group consists of a supervisor, a foreman and a temporary supervisor. The supervisor and the foreman are former millwrights.

^{10/} The Employer does not employ electricians at Motiva.

assigned to only one of those steps. Thus, it appears that multiple step jobs may be assigned to more than one craft. The record indicates that these reports are also generated on a daily basis for other zones at the refinery and that the work orders are similarly assigned to a specific craft in those zones. A single work order number may be assigned to more than one craft. Upon receipt of these reports, the millwright supervisors confer with the supervisors of pipefitters, boilermakers and welders to coordinate activities for jobs that require more than one skill. Thus, as noted above, pipefitters are assigned to jobs in which a millwright must remove a pump from the piping system before transporting it to the millwright shop. In such circumstances, appropriate supervision would confer to coordinate that joint effort.

A substantial portion, estimated at about 50 percent, of the Employer's work at Motiva is breakdown maintenance. It appears that for breakdowns occurring during the Employer's normal work hours, the nonshop supervisors such as Wilson, Owens, Todora and Dick are responsible for the initial response to breakdowns of Motiva's production equipment in their particular zones. If the initial supervisor determines that the repair of a breakdown may require millwright skills, the supervisor would request assistance of the millwright supervisor for that area. Thus, it is possible that millwrights may work with other crafts to repair breakdowns. In those situations, the millwrights primarily perform work specific to their craft. The Employer designates an on-call supervisor to respond to breakdowns occurring outside the Employer's normal work hours. It appears that such on-call duty is rotated among supervisors, including millwright supervision. The on-call supervisor is responsible for calling out employees in the appropriate craft to appear at the refinery for the repair of the breakdown. The on-call supervisor determines which crafts are required for the repair and attempts to obtain employees in those crafts if available. If employees in a specific craft are not available, then any employee may be called out. If millwright skills are required for a breakdown repair and no millwrights are available, a millwright supervisor may be called in to supervise non-millwrights on the job. Similarly, non-millwright supervision may supervise millwrights on jobs that do not require millwright skills. The record does not reflect the portion of millwrights' time they spend working with other crafts in breakdown situations nor the amount of time millwrights may be assigned to work under non-millwright supervision.

The Employer has a crew consisting of a millwright, a pipefitter, a boilermaker and a welder who work on bringing pumps up to API specifications. The record does not indicate whether this crew is permanent or what portions of the members' time is spent on crew activities. However, each member of this crew is expected to bring his particular skill to bear on crew activities.

The Employer also has a volunteer hurricane team consisting of pipefitters, boilermakers and millwrights who insure that the refinery is safely maintained during hurricane threats. The record does not reflect the amount of time employees devote to, or the number of employees on, this team.

Several supervisors testified that employees work in composite or mixed crews about 50 percent of the time. They indicated that a composite crew would consist of employees from more than one craft all working together to get the job done; could be comprised solely of boilermakers, pipefitters and operators; and would not necessarily have to include a millwright. Supervisors testified, however, that when millwrights are working in composite crews, they are

primarily performing millwright work. According to supervisors, about 90 or 95 percent of millwrights' time is spent doing the work of their craft. Inasmuch as some foremen supervise small groups of boilermakers, pipefitters and welders, the Employer's assertion that about 50 percent of employees' work is in composite crews is not necessarily inconsistent with a millwright's testimony that he spends about 1 percent of his time working with other crafts.

In support of its assertion that millwrights spend a substantial portion of their time working in composite crews, the Employer submitted an attachment to its brief purporting to summarize composite crew assignments reflected in daily time sheets (Employer's Exhibit 15). The Employer's attachment identifies which employees by craft worked on a particular work order number for a particular day. The attachment shows millwrights who worked on the same job number on the same day as employees from other crafts but does not reflect the number of hours spent working on the job, whether the millwrights worked the job at the same time as other crafts, or whether millwrights worked together with other crafts even if they worked at the same time. Thus, it is possible that a millwright working on the same job on the same day as another craft may have worked it at a different time or place. Moreover, even when working on the same job, it is clear from the record that the millwrights primarily perform craft work. Finally, the record suggests that the millwrights spend a great deal of their time working in the shop rebuilding pumps which is work that is not performed by any other craft. ^{11/}

A comparison of the time sheets (Employer's Exhibit 15) with the attachment to the Employer's brief reveals that on June 27, 2000, on job 1999014122, three millwrights worked 3 hours each and a fourth worked 2 hours; a welder, pipefitter and a boilermaker worked 9 hours each; another pipefitter worked 9.5 hours; an inspector worked 2 hours and an operator worked 4.5 hours. Assuming that the millwrights worked at the same time as the employees putting in 9 hours on that job, it appears that there were a total of 11 millwright man-hours on that job when other crafts were present. The fact that the millwrights spent 3 or less hours each on the job and other employees were there for 9 or more hours would suggest that these employees were not assembled together into a specific crew to work together on the job from start to finish. This evidence suggests that rather than constituting a crew assigned to work together to complete a particular job, these employees were assigned distinct craft functions in order to complete the job and did not remain in the crew to assist other crafts in the performance of their specific skills.

The time sheet also discloses that on job 1999049775 on June 27, 2000, a millwright, two welders and three pipefitters worked 11.5 hours each while a pipefitter, a welder and a laborer worked 8.5 hours each. Assuming that the millwright worked at the same time and the same place as the pipefitters, there were a total of only 11.5 millwright man-hours spent with other crafts on this job. The time sheet discloses that for June 27, 2000, on job 200000138, three millwrights worked 9 hours each, a millwright worked 3 hours, a pipefitter, boilermaker and carpenter worked 9 hours each, an operator worked 3 hours, a pipefitter worked 2 hours and

^{11/} The information for the Employer's attachment to its brief was purportedly obtained from its Exhibit 15. However, the attachment provides job assignment information for June 23, 26, 28 and 29, but Employer's Exhibit 15 does not contain any time sheets for those dates. Because the summaries for these dates are not based on evidence in the record, I have not considered them in reaching my decision. I have also ignored duplicate situations in which an employee is listed more than once for the same day and job number.

four carpenters worked 1 hour each. Assuming that the millwrights worked at the same time and place as the other 9 hour employees, there were a total of only 30 millwright man-hours working with other crafts.

For job 200021314 on June 27, 2000, the Employer had two millwrights working 9 hours each, a millwright working 3 hours and two vibration persons working 4 hours each. Assuming the vibration people worked at the same time and place as the millwrights,^{12/} a total of only 11 millwright man-hours were spent working with other crafts.

Thus, the June 27, 2000 time sheets reflect that millwrights worked a total of 281.6 man-hours of which only 63.5 hours could have been possibly spent working with other crafts. This represents at most only 23 percent of millwrights' total time spent on these mixed jobs. A similar analysis for July 3, 5, and 6, 2000, reflects that millwrights could possibly have worked only 9 percent, 7 percent and 9 percent of their time with other crafts on those days. These figures include the fact that a single operator replaced Poche on July 3, 2000 for job 2000025202, a single welder was assigned for an hour with millwrights on job 200025797 for July 5, 2000 and the July 6, 2000 jobs involved vibration people and pipe inspectors who would normally check millwrights' work after it is completed.

The record discloses that on June 30, July 1 and July 2, 2000, employees were called out on their off days to work on repairing fire damage in the H-oil area designated as job 2000025695. On June 30, 2000, a millwright worked this job with 24 employees from other crafts. On July 1, 2000, two millwrights worked this job with 39 employees from other crafts. On July 2, 2000, four millwrights worked this job with 37 employees from other crafts. On Monday, July 3, 2000, a regularly scheduled work day, 28 employees worked on the fire damage repair job but none of them were millwrights.

The record reflects that since 1994, there have been six permanent transfers into or out of the millwrights' craft. There were two transfers from millwright positions to the vibration group. An auto mechanic, a carpenter and a boilermaker transferred into the millwrights' craft but the record does not reflect whether they were transferred in as helpers or mechanics or whether they were sent for ABC training upon entering the millwright craft. The most recent transfer occurred in the Fall of 1999 when J. J. Lee, a carpenter helper, was transferred to the position of millwright helper. A millwright supervisor testified that Lee did not possess the requisite knowledge to be transferred in as a mechanic and, therefore, was initially assigned as a millwright helper. The supervisor indicated, regarding employees in general, and Lee in particular, that transfers are into the helper position and following on the job experience and ABC training, employees are promoted up through the various craft levels. For example, the current millwright supervision was promoted from millwright positions. Inasmuch as the vibration group checks the work of millwrights and two of three members of that group are former millwrights, it would also appear that the vibration group is a natural progression for millwrights.

^{12/} As noted above, vibration people check the operation of a pump after the millwrights have completed their work.

Supervisors generally testified that employees appearing on a time sheet under a particular foreman are listed there for timekeeping purposes and that the time sheets do not necessarily reflect where an employee worked during a particular day. There was general testimony that an employee on a time sheet for one area may be reassigned to another area. However, the record does not reflect the frequency of such reassignments or the extent to which they might involve millwrights. Except for millwrights assigned to help repair the H-oil area fire damage, the record does not contain evidence of any such specific temporary reassignment into or out of millwright positions. Moreover, the millwrights, who were called in on their off days to help with the H-oil fire damage, returned on their next regularly scheduled work day to millwright work. The record indicates that a millwright helper was subsequently assigned to the H-oil area but does not indicate the frequency or duration of that assignment. A millwright who was called out to the

H-oil area on July 2, 2000, testified that he was called out to specifically perform millwright's work on a pump. The record does not otherwise reflect the specific tasks performed by the millwrights in connection with the repair of the fire damage. Poche, the millwright group operator, was reassigned to work nights on the fire damage repair and the time sheets indicate that another operator was assigned to the millwright group to replace him.

A turnaround is a period of time when a portion of the refinery is rendered non-operational and the Employer hires employees to restore it to operational status. A turnaround is a short-term project which normally lasts a matter of weeks or a couple of months in which the Employer hires employees on a temporary basis and lays them off at the conclusion of the turnaround. The record does not reflect the frequency of turnarounds or whether the employees hired for a turnaround have previously worked for the Employer at Motiva. The most recent turnaround started in September 1999 and lasted 44 days during which time the Employer hired about

500 employees, including two millwrights who continued to be employed following the conclusion of the turnaround. One of those millwrights was still employed at the time of the hearing in a full-time millwright position. The Employer maintains a call-out list of employees who may be available for a turnaround which shows the employee's name, telephone number, craft and whether they have previously worked for the Employer. In turnaround situations, the Employer places help wanted advertisements for employees with specific skills and hires employees according to craft needs.

Around July 7, 2000 the Employer laid off some of its Motiva employees, including four millwrights, because Motiva cut the Employer's maintenance budget by 10 percent. A supervisor testified that he told the laid off millwrights that there was a cutback and that he did not know when they might be hired back. A millwright testified that the supervisor told him that he was being given a layoff and that the supervisor would try to get the employees back as soon as things were worked out. Although Hurley testified that the laid-off employees would be brought back to the site if they were qualified, he did not indicate when or under what circumstances that might occur. There was no evidence regarding the Employer's history of layoffs and recalls or when, if ever, Motiva might increase the Employer's maintenance budget. Finally, the record reflects that there has been a low rate of turnover among millwrights at Motiva.

ANALYSIS:

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Purity Food Stores*, 160 NLRB 651 (1966). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only determine whether the employees sought by Petitioner here constitute an appropriate craft unit.

Unit Scope:

The Petitioner seeks to represent the millwrights on the basis that they constitute a separate craft unit. In *Burns and Roe Services Corporation*, 313 NLRB 1307 (1994), the Board held that a craft unit is one consisting of a distinct and homogeneous group of skilled craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. In determining whether a group of employees constitutes a separate appropriate craft unit, the Board examines whether the employees participate in a formal training or apprenticeship programs, whether their work is functionally integrated with the work of other excluded employees, whether the duties of the employees overlap the duties of excluded employees, whether the employer assigns work according to need rather than along craft jurisdictional lines and whether the employees sought share common interests with other employees including wages, benefits and cross-training. *Burns and Roe Services Corporation*, supra at 1308; *Mallinckrodt Chemical Works Uranium Division*, 162 NLRB 387 (1966). (The Board set forth the criteria necessary for craft severance. The Board uses some of the same elements in determining appropriateness of craft unit in unrepresented setting.) *Monsanto Company*, 172 NLRB 1461 (1968). See also, *Shaus Roofing and Mechanical Contractors, Inc.*, 323 NLRB 781 (1997).

All of the Employer's millwrights are employed in shop zone S-1 at the Motiva refinery and are under separate millwright supervision. The requirement that the millwrights must achieve, at the time of hire, a passing grade on a millwright skill assessment examination and may be sent to ABC millwright classes demonstrates that they are skilled craftsmen. Thus, the millwrights constitute a distinct and homogenous group of skilled craftsmen.^{13/} In *Burns & Roe*, the Board relied upon separate supervision in a separate department to find true craft status. Indeed, millwrights are primarily engaged in the overhaul, repair and precision alignment of rotary equipment which is a function not performed by any other employees. This work requires

^{13/} Although a single operator is assigned to millwright supervision in shop zone S-1, I find that this circumstance does not detract from my conclusion that the millwrights are a readily identifiable group of skilled employees in terms of their supervision and assigned department.

use of craft skills and specialized precision measuring devices which are furnished to the millwrights by the Employer but not to other employees. The millwrights participate in a formal training program to the extent that they are tested and sent to formal classroom training by the Employer in their skill areas. Moreover, the Employer requires millwrights to have extensive experience and/or knowledge which no other employees are required to possess in that craft. *Burns & Roe*, at 1308. Although the work of millwrights is functionally integrated and overlaps that of some of the other employees, it does so only to the extent that such work involves the removal and reinstallation of pumps from the refinery piping system, a function which is incidental to the primary function of millwrights which is overhauling pumps in the shop. Pipefitters may occasionally work with millwrights in the skilled precision alignment of pumps by tightening bolts at the direction of the millwright. However, such work by the pipefitter, because it is at the direction of the millwright, does not require the pipefitters to possess millwright skills. The performance of unskilled work across craft lines does not preclude the existence of an appropriate craft unit. *Schaus Roofing*, supra. Indeed, the record does not reflect that millwrights are trained to perform the skilled work of other employees or that other employees are trained to perform the skilled work of the millwrights.

The evidence clearly demonstrates that the Employer assigns work along craft lines. Thus, initial work order assignments are contained in the Daily Work Schedule by Shop Zone report and are assigned according to craft. Non-millwrights do not overhaul, repair, or precision align rotary equipment because such work is assigned strictly along craft lines. Perhaps the most telling evidence that work is assigned along craft lines is the fact that millwrights are entirely capable of disconnecting flange bolts and inserting blinds when they disconnect a pump from the piping system but they do not do so unless a pipefitter is not available. Instead, the Employer exerts the effort to have supervision coordinate the presence of a pipefitter for that task. In the absence of the assignment of work along craft lines, it would appear to be more efficient to have the millwright disconnect the flange bolts and install the blind rather than having supervision coordinate the use of an extra employee.

The Employer's primary contention is that the millwrights are not a separate appropriate unit because they regularly work in teams with other employees. However, the evidence suggests that the millwrights' work on such teams with other crafts is minimal and that when they do work on teams with other craft employees, the millwrights are responsible for the performance of work falling into their craft jurisdiction while the other employees are expected to perform the work of their own respective crafts. The evidence further shows that these multi-craft teams are not work crews in the sense that all members of the team are expected to work together until the job is completed. Rather, the evidence suggests that the individual team members are expected to work with the team only so long as their particular skills are required and are expected to move on to another task when the team no longer requires their skills. Thus, the fact that millwrights may work on the same work orders as other employees does not significantly mitigate the Employer's assignment of work along craft lines. *Burns & Roe*, supra, at 1308-1309.

The factors described above militate strongly in favor of finding the millwrights to be a true craft unit. Although the millwrights share the same wages, hours, benefits and working conditions with other employees, these factors are not sufficient to overcome the substantial evidence that the millwrights constitute a separate appropriate craft unit. *Burns & Roe*, supra.

The cases cited by the Employer do not require a contrary finding. Indeed, the precedent relied on by the Employer in its brief is inapposite.

In *Brown & Root Braun*, 310 NLRB 632 (1993), cited by the Employer, the employees found not to constitute a craft, were not separately supervised in a separate department as are the millwrights here, and in *Brown*, there was specific evidence, unlike here, of substantial temporary reassignments across craft lines. In *A. C. Pavement Striping Co.*, 296 NLRB 206 (1989), relied on by the Employer, the Regional Director, with Board approval, found that teamsters and painters did not constitute separate appropriate craft units on the basis of their common supervision and job functions and their lack of particularized skills. Here, the millwrights have separate supervision, distinct job functions and specific skills related to their work. In *Dick Kelchner Excavating*, 236 NLRB 1414 (1978); *R.B. Butler, Inc.*, 160 NLRB 1595 (1966); and *Plumbing Contractors Association*, 93 NLRB 1018 (1951), cited by the Employer, separate craft units were, in fact, found to be appropriate. In *Atlanta Division of S.J. Groves and Sons Company*, 267 NLRB 175 (1983), cited by the Employer, the Board found that the employer's employees were capable of being separated into seven different craft groups and that the unit sought by the joint petitioner was an arbitrary grouping of four of those seven crafts and was therefore inappropriate. The Petitioner here is not seeking a multi-craft unit, but seeks a unit limited to the millwrights. *General Electric Company*, 366 US 667, (1961) does not support the Employer's position. In *General Electric*, the issue was the legality of reserved gate picketing and the case did not present any issue as to the appropriate unit. In *Longcrier Company*, 277 NLRB 570 (1985), the employer commonly supervised employees it classified as carpenters or laborers and assigned them to operate construction equipment without regard to their classification. The union sought a unit limited to employees who operated the equipment a majority of their time. The Board found that the unit sought was not appropriate because the employees, unlike the millwrights here, shared common supervision with other employees and the employer assigned employees to operate equipment based on need without regard for craft lines. In the instant case, the millwrights are separately supervised and their work is assigned along craft lines.

The Operator:

Although an operator is normally assigned to the millwrights' group in the S-1 shop, the operator does not possess the skills of the millwrights nor does he perform their work of repairing, overhauling and precision aligning rotary equipment. Although the operator assists the millwrights in moving the equipment to be repaired, he brings his own separate set of skills to bear on the job at hand. Accordingly, because the millwrights constitute a separate appropriate unit on the basis of their separate craft status and the operator does not share the same craft skills or functions of the millwrights, I shall exclude the operator from the unit found appropriate. Cf. *Burns & Roe*, supra.

Turnaround Millwrights:

I note that the turnaround employees are hired for a specific project of finite duration. Moreover, there is no evidence that they are employed on a regular basis to perform turnaround work. Accordingly, I conclude that the turnaround employees are temporary employees who do not share a community of interest with the full-time or regular part-time employees and are

excluded from the unit. *Macy's East*, 327 NLRB No. 22 (1998). Such exclusion, however, does not preclude an employee hired for a turnaround from becoming a regular full-time or regular part-time employee if his employment extends beyond the turnaround. Thus, millwrights hired for turnarounds and who have continued their employment in the craft are properly included in the unit.

Laid-Off Millwrights:

On July 7, 2000, as previously noted, the Employer laid off four of its regular millwrights. In order to be eligible to vote in a representation election, laid-off employees must enjoy a reasonable expectancy of recall during the payroll period for eligibility and on the date of the election. *Apex Paper Box Co.*, 302 NLRB 67 (1991). The record is not sufficient to enable me to determine with any degree of certainty whether the laid-off millwrights have a reasonable expectancy of recall in the foreseeable future. Accordingly, I shall permit the laid-off millwrights to vote subject to challenge if they appear at the polls to vote.

CONCLUSION:

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time millwrights, including machinists, employed by the Employer at the Motiva refinery at Convent, Louisiana, but excluding all other employees, operators, office clerical employees and all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director of Region 15 among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not

they desire to be represented for collective-bargaining purposes by **Millwright and Machinery Erectors Local Union No. 720, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO.**

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director for Region 15 who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 15, National Labor Relations Board, 1515 Poydras Street, Room 610, New Orleans, Louisiana 70112-3723, on or before **August 9, 2000**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **August 16, 2000**.

Dated at Cincinnati, Ohio this 2nd day of August 2000.

Richard L. Ahearn, Regional Director
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